

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 61896-2-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
MARY A. LOGAN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: August 24, 2009

PER CURIAM. Mary Logan appeals her conviction for first degree malicious mischief, arguing in part that the court's reasonable doubt instruction violated the directive in State v. Bennett, 161 Wn.2d 303, 165 P.3d 1241 (2007) that courts give only the Washington Pattern Instruction on reasonable doubt, WPIC 4.01. The State concedes that the instruction in this case violated Bennett's directive. It contends, however, that the instruction satisfied due process and resulted in no prejudice. The State's contention is defeated by our recent decision in State v. Castillo, No. 61867-9-I, 2009 WL 1543799 (Wash. Ct. App. June 1, 2009).

In Castillo, the trial court gave a reasonable doubt instruction identical to the instruction given in this case. We held the instruction violated "the express directive of the supreme court in Bennett." Castillo, slip op. at 10. We expressly rejected the State's harmless error argument, noting that "the presumption of innocence is simply too fundamental, too central to the core of the foundation of our justice system not to require adherence to a clear, simple, accepted, and

uniform instruction.” Castillo, slip op. at 7 (quoting Bennett, 161 Wn.2d at 317-18). We recognized that the supreme court allowed for the possibility that it might approve an instruction that proved to be better than WPIC 4.01. We concluded, however, that the instruction given by the trial court in Castillo was not better than the WPIC. Finally, in response to the State’s argument that “no reported case . . . reverses on the basis that a trial court failed to use WPIC 4.01,” we said: “This is that case.” Castillo, slip op. at 10.

Castillo is indistinguishable from this case. Accordingly, we reverse Logan’s conviction and remand with instructions for the trial court to use WPIC 4.01 in any retrial. Given this disposition, we do not reach the other issues raised on appeal.

Reversed.

For the court:

Becker, J.

Grosse, J.

Schindler, C.J.